

Subject: IMMIGRATION REFORM AND CONTROL ACT (I-9)

REFERENCES	SECTIONS
Human Resources Memorandum http://hr.dgs.ca.gov/PublicationsAndResources/default.htm	99-008
Law & Regulation http://uscis.gov/graphics/lawsregs/INA.htm http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-181?f=templates&fn=document-frame.htm#publaw-pl99603	US Government: Public Law 82-414-Immigration and Nationality Act, Public Law 99-603-Immigration Reform and Control Act
Personnel Management Policy and Procedures Manual (PMPPM)	370.3
Responsible Control Agency and Program	U.S. Department of Homeland Security-Bureau of Citizenship and Immigration Services http://uscis.gov
Other	
U.S. Handbook for Employers http://uscis.gov/graphics/lawsregs/handbook/hand_emp.pdf The I-9 Process in a Nutshell http://uscis.gov/graphics/services/employerinfo/EIB102rdIn.pdf I9: http://uscis.gov/graphics/formsfee/forms/i-9.htm http://uscis.gov/graphics/howdoi/EEV.htm http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf	

Immigration Reform and Control Act (I-9)

Policy

The DGS is responsible for completion and retention of Form I-9 for each individual it hires for employment. This includes citizens and noncitizens. On the form, the DGS must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. Acceptable documents are list on the back of the form. However, changes have occurred since issuance of the form; therefore, DGS employers must refer to the document "The I-9 Process in a Nutshell" to ensure compliance with the law.

Definition/ Explanation

The Employment Eligibility Verification (I-9) form is used to verify the employment eligibility of all persons hired on or after, November 7, 1986. The DGS should hire only United States citizens or aliens who are authorized to work in the United States.

Non-citizens who are authorized to work in the United States may be employed in all classifications except peace officer classifications. (See section on Citizenship in this manual).

The I-9 process

General

The DGS is responsible for the completion and retention of Forms I-9 for all employees, regardless of citizenship or national origin, hired for employment in the United States. An employee is any individual compensated for services or labor by an employer, whether by payment in the form of wages or other remuneration (such as goods or services such as food and lodging).

For whom is a Form I-9 unnecessary?

- Employees hired before, November 6, 1986, and continuously employed by the same employer
 - Individuals performing casual employment who provide domestic service in a private home that is sporadic, irregular or intermittent
 - Independent contractors
 - Workers provided to employers by individuals or entities providing contract services, such as temporary agencies (in such cases, the contracting party is the employer for I-9 purposes)
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The I-9 process (continued)

A new law recently signed by President Bush allows employers to complete (i.e., using electronic signatures) and store I-9 forms electronically. The law does not change other I-9 requirements, but allows (without requiring) the new electronic format. The new law took effect April 30, 2005. Employers shall take the same precautions to store I-9 information (which can contain indications of national origin or Social Security numbers) in a confidential manner.

Note:

- The DGS is not permitted under the law to contract for the labor of an individual whom it knows is not authorized for employment. Employers who violate this prohibition may be subject to civil and criminal penalties.
 - Employers are not permitted to request more or different documents than are required or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual presenting the document.
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Retention of I-9 records

The DGS must retain the I-9 form of each employee **either** for three years after the date of hire **or** for one year after employment is terminated, **whichever is later**. All current employees, therefore, must have I-9s on file with the DGS. Upon request, all Forms I-9 subject to retention requirement must be made available to an authorized official of the Department of Homeland Security, Department of Labor, and/or the Office of Special Counsel for Unfair Immigration-Related Employment Practices of the Department of Justice.

Examples for terminated employees:

Step one: Identify hire date and add 3-years = [date A]

1. 11/01/93 + 3 years = 11/01/96 or 03/27/99 + 1 year = 05/19/04

Step two: Identify termination date and add 1 year = [date B]

1. 07/05/94 + 1 year = 07/05/95 or 05/19/03 + 1 year = 05/19/04
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Retention of I-9 records (continued)

Step three: Compare date [A] and [B]

1. Compare 11/01/96 and 07/05/95
2. Compare 03/27/02 and 05/19/04

Step four: Determine the later date [A] or [B] in each case. The later of the two becomes the retention date for the corresponding Form I-9.

Example results:

1. 11/01/96 is later than 07/05/95, so 11/01/96 is the retention date for this terminated employee's I-9.
2. 05/19/04 is later than 03/27/02, so 05/19/04 is the retention date for this terminated employee's I-9.

Missing I-9 forms

If the DGS discovers that an I-9 is not on file for a given employee, the Personnel Transactions Unit (PTU) shall request the employee to complete Section 1 of an I-9 form immediately and submit documentation as required in Section 2. The new form shall be dated when completed—**never** post-dated (the PTU may provide an explanatory annotation to an untimely-completed Form I-9). When an employee does not provide acceptable documentation, the DGS **shall** terminate employment to avoid the risk of being subject to penalties for “knowingly” continuing to employ an unauthorized worker if the individual is not in fact authorized to work.

Discovering an unauthorized employee

If the DGS discovers that an employee has been working without authorization, the PTU shall reverify work authorization by allowing such an employee another opportunity to present acceptable documentation and complete a new I-9. However, the DGS shall be aware that if it knows or should have known that an employee is unauthorized to work in the United States, we may be subject to serious penalties for “knowingly continuing to employ” an unauthorized worker.

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Completing the I-9 form

There are three sections of the Form I-9.

- The employee must complete Section 1.
- The employer must complete Sections 2 and 3.

The DGS is required to ensure that all sections of the Form I-9 are timely and properly completed.

The table below depicts the section number and the responsibilities of the parties impacted.

Section 1: Employee Information and Verification	
Party	Responsibility
Employer	<ul style="list-style-type: none">• Ensure that Section 1 is completed by the employee upon date of hire (i.e., first day of paid work) <p>Note 1: If employee refuses to sign, terminate the appointment.</p> <p>Note 2: An employee may not be able to provide a social security number if the Social Security Administration has not yet issued the individual a social security card. This information block is optional. Therefore, an employer cannot require an employee to complete it.</p>

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the I-9 form
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Completing
the I-9 form**

Employee	<ul style="list-style-type: none">• Must attest to his/her status by checking the applicable box indicating that they are:<ul style="list-style-type: none">➤ Citizen/national of the United States➤ Lawful permanent resident with a “green card”➤ Alien authorized to work in the United States until a specified date• Must sign and date (dates must be in the format of month/day/year) <p>Note: Certain aliens, such as asylees and refugees, are work authorized incident to their status and may not have an expiration date to fill-in for the bottom box of the attestation block in Section 1.</p>
Translator or preparer	<ul style="list-style-type: none">• Must also sign, date, and provide requested information in the Preparer/Translator Certification block. The DGS designee must fill in and sign this block if they have assisted employees.

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the I-9 form**
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Section 2: Employer Review and Verification	
Party	Responsibility
Employer	<ul style="list-style-type: none"> • Shall list the documents that were produced by the worker to verify his/her identity and employment eligibility, which identifies the documents that have been removed). A worker: <ul style="list-style-type: none"> ➤ May provide a List A document, which establishes both identity and work authorization ➤ May choose to provide one List B document, which establishes identity, and one List C document, which establishes work eligibility. (Documentation must be rejected if it is expired, with two exceptions: the U.S. passport and all List B documents • DGS cannot refuse to hire an individual because the individual's document has an expiration date • Shall personally review original documents only. Exception: List C, #3, a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the U.S. bearing an official seal is acceptable. All identifying information, including the document title, the issuing authority, the document number, and/or the expiration date, if applicable, must be provided in full.) <p>Receipt Rule: Employees who do not possess the required documentation when employment begins may not submit receipts showing that they have applied for initial applications for documents or for applications for extension of documents. The DGS may only accept receipts for:</p> <ul style="list-style-type: none"> • A replacement document in lieu of the required document if a document was lost, stolen, or damaged. The replacement document must be presented within 90 days of the hire or, in the case of reverification, the date employment authorization expires.

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form
(continued)**

Section 2 (continued)

Receipt Rule (continued)

- The arrival portion of the Form I-94 containing an unexpired temporary I-551 ADIT stamp and photograph of the individual, until the expiration date. If no expiration date is indicated, the DGS may accept the receipt for one year from the issue date of the I-94 form. The “green card” itself must be presented at the expiration date on the Form I-94.
- A Form I-94 containing a refugee admission stamp as long as the employee presents:
 - The departure portion of Form I-94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, Form I-688B, or a social security card that contains no employment restrictions
 - An unexpired Form I-766 or Form I-688B, or a social security card that contains no employment restrictions together with a document described under List B

Note: A receipt is never acceptable for employment lasting less than 3 working days.

Standards of Review:

The DGS shall review and accept documents that reasonably appear to be genuine and to relate to the person presenting them (e.g., the name on the Social Security card should be compared to the name on the state driver's permit and the photo on the driver's permit compared to the appearance of the person who presented the documents). The DGS may reject documents if they do not reasonably appear to be genuine and ask employees who present questionable documentation for other documentation that satisfy the I-9 requirements.

Signature and Date:

The DGS designee who personally reviewed the documents shall sign and date the bottom of Section 2 and provide all requested information in the Certification portion.

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**Completing
the I-9 form
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Completing
the I-9 form**

Section 3: Updating and Re-verification

The DGS is required to re-verify employment eligibility. When an employee's employment authorization (indicated in Section 1) or evidence of employment authorization recorded in Section 2 has expired. The DGS may also re-verify employment authorization, in lieu of completing a new I-9, when an employee is rehired within three years of the date that the I-9 was originally completed and the employee's work authorization or evidence of work authorization has expired. The re-verification requirement does not apply to the U.S. passport or "green card" (Form I-551).

Re-verification Process:

No later than the date that employment authorization or employment authorization documentation expires, the DGS must re-verify employment authorization on Section 3 of the I-9, or by completing a new I-9 form to be attached to the original I-9.

Where Re-verification is NOT Required:

Permanent Resident Cards (also known as Alien Registration Receipt cards, Forms I-551, Resident Alien Cards, Permanent Resident Cards, or "Green Cards") are issued to lawful permanent residents and conditional resident and should not be re-verified when the cards expire.

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Rehires

The DGS may re-verify information of an employee rehired within 3 years of the date of the initial execution of the Form I-9 as an alternative to completing a new Form I-9.

To update: The DGS shall record the date of rehire, sign and date Section 3 of the previously completed I-9 or complete a new I-9.

To re-verify: The DGS shall record the date of rehire, record the document title, number, and expiration date (if any) of documentation presented to re-verify expired work authorization or work authorization documentation, sign and date Section 3 of the previously completed I-9. A new Form I-9 may be chosen to be completed instead.

Note: Documentation for re-verification purposes may be the renewed version of the originally presented document or any other acceptable document from List A or List C that demonstrates current work eligibility/authorization. List B documents do not need to be updated or re-verified, even if expired.

Other issues

Copying of Documentation:

The DGS may, but is not required to, copy a document (front and back) presented by an individual solely for the purpose of complying with the I-9 verification requirements. If such a copy is made, it must be retained with the Form I-9.

Frequently asked questions

Can I fire an employee who fails to produce the required document(s) within three (3) business days?

Yes. You can terminate an employee who fails to produce the required document(s), or a receipt for a replacement document(s) (in the case of lost, stolen, or destroyed documents), within three (3) business days of the date employment begins. However, you must apply these practices uniformly to all employees. If an employee has presented a receipt for a replacement document(s), s/he must produce the actual document(s) within 90 days of the date employment begins.

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**Frequently
asked
questions**
(continued)

What is my responsibility concerning the authenticity of document(s) presented to me?

You must examine the document(s) and, if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it.

May I accept a photocopy of a document presented by an employee?

No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

Attachment

I-9 form <http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>
